

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

AMERICAN HOSPITAL ASSOCIATION
and HEALTH FORUM, LLC,

Plaintiffs,

v.

GRACIE PLUM INVESTMENTS, INC.
and ZEBU COMPLIANCE SOLUTIONS,
INC.

Defendants.

CASE NO.:

JURY TRIAL DEMANDED

COMPLAINT AND JURY DEMAND

Plaintiffs American Hospital Association (“AHA”) and Health Forum, LLC, (“Health Forum”) (collectively “Plaintiffs”) by and through its undersigned counsel, bring this action against Defendants Gracie Plum Investments, Inc. and Zebu Compliance Solutions, Inc. for injunctive relief and damages under the laws of the United States and the State of Illinois, and in support thereof state as follows:

THE PARTIES

1. Plaintiff American Hospital Association is a non-profit corporation organized under the laws of the state of Illinois with its principal place of business at 155 N. Wacker Drive, Suite 400, Chicago, IL 60606.

2. Plaintiff Health Forum, a wholly owned subsidiary of AHA, is a limited liability company organized under the laws of the state of Illinois with its principal place of business at 155 North Wacker Drive, Suite 400, Chicago, IL 60606.

3. Upon information and belief, Gracie Plum Investments, Inc. is an Ohio corporation with its principal place of business at 609 2nd Street, Suite 2, Portsmouth, Ohio

45662. Upon information and belief, Gracie Plum Investments, Inc. is the current name of the entity that was initially incorporated as Yost Engineering, Inc. and subsequently changed its name to YEI Corporation. Each of Gracie Plum Investments, Inc., Yost Engineering, Inc. and YEI Corporation is referred to herein as “Gracie Plum”.

4. Upon information and belief, Zebu is a wholly owned subsidiary of Gracie Plum and is an Ohio corporation with its principal place of business at 609 2nd Street, Suite 2, Portsmouth, Ohio 45662. Upon information and belief, Zebu Compliance Solutions, Inc. is the current name of the entity that was initially incorporated as YEI Healthcare Corporation. Each of Zebu Compliance Solutions, Inc. and YEI Healthcare Corporation is referred to herein as “Zebu”.

NATURE OF ACTION AND JURISDICTION

5. This is an action for infringement of federally registered copyrights in violation of the Copyright Act, 17 U.S.C. § 501 and for breach of contract in violation of the law of the State of Illinois.

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this is a civil action arising under an Act of Congress relating to copyright. This Court has supplemental jurisdiction over the Illinois state claims pursuant to 28 U.S.C. § 1367(a), because such claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

7. Venue is proper in this court pursuant to 28 U.S.C. §§ 1391(b) because, upon information and belief, Zebu has offered to sell or sold software and/or conducted business that uses software containing the infringing content, in violation of the terms of Gracie Plum’s contracts with Health Forum, throughout the United States, including within this judicial district

such that the claims alleged in the Complaint arose, in part, in the Northern District of Illinois. Additionally, this Court has personal jurisdiction over Defendants in the Northern District of Illinois.

FACTS

The Official UB-04 Data Specification Manual

8. In 1975, AHA formed its National Uniform Billing Committee to start the process of creating a single, standard billing form and data set that could be used nationwide by institutional providers and payers to process health care claims.

9. AHA spent seven years and invested considerable effort and resources in creating a standard billing form and supporting materials.

10. AHA's billing form identifies a core set of data about services provided to the patient, the clinical basis for treatment, related events surrounding the patient's care, and other information needed by third-party payers. Each of these data elements is assigned a numbered space on the form.

11. AHA created fourteen sets of codes that are used to complete certain numbered spaces on the billing form. These codes represent important information about the claim, such as the type of facility in which treatment was provided, the patient's condition, the patient's discharge status, the diagnosis and procedures performed, and any specific accommodation, ancillary service or special billing calculations or arrangements.

12. AHA's Official Data Specifications Manual provides instructions for completing each numbered space on the billing form, including through detailed explanations of the fourteen sets of codes.

13. Since creating the first uniform billing form and associated Official Data Specifications Manual, AHA has spent considerable time, effort and resources updating the form, as well as the associated codes and manuals.

14. The most recent version of the billing form and associated materials were approved in 2004 and published in 2006. This billing form is referred to as the UB-04 form. The associated manual is referred to as Official UB-04 Data Specifications Manual. The fourteen sets of codes are referred to as the UB-04 codes.

15. The UB-04 form is currently used by all providers for reimbursement from payers.

16. Every year since 2006, AHA has published a new edition of the Official UB-04 Data Specifications Manual that incorporates all changes in the data specifications and codes that were adopted during that year.

17. AHA has granted Health Forum, AHA's publishing, data and information subsidiary, a license to publish the Official UB-04 Data Specifications Manual and to make copies of the Official UB-04 Data Specifications Manual available for sale to healthcare providers and other interested entities.

AHA's Copyright Registrations and Ownership of Underlying Content

18. AHA owns the copyright in the Official UB-04 Data Specifications Manual and all of the codes contained therein.

19. AHA obtained a copyright registration for the 2007 edition of the Official UB-04 Data Specifications Manual, which was published in 2006, effective September 24, 2012, Registration No. TX 7-577-264.

20. In each of the years 2010 through 2016, AHA obtained a copyright registration for the Official UB-04 Data Specifications Manual that was published during the relevant year. AHA filed each of these copyright applications within three months of the first publication of the relevant edition of the Official UB-04 Data Specifications Manual. Attached hereto as Exhibit A is a list identifying by number the Certificates of Registration for the 2007 and 2010-2016 editions of the Official UB-04 Data Specifications Manual.

21. AHA obtained a copyright registration of a data file that includes only the code values and code titles (also referred to as the “short descriptions”) for each of the fourteen codes contained within the Official UB-04 Data Specifications Manual effective May 4, 2012, Registration No. TX-7-538-546.

22. AHA obtained copyright registrations of data files that included only the code values and code titles for each of the fourteen codes contained within the 2014, 2015 and 2017 editions of the Official UB-04 Data Specifications Manual . Attached hereto as Exhibit B is a list identifying by number the Certificates of Registration for the 2012, 2014, 2015 and 2017 data files.

**Defendants Obtained Copies of the 2012, 2013 and 2014 Editions
of the UB-04 Manual Pursuant to License Agreements**

23. Individual copies of the Official UB-04 Data Specifications Manual can be purchased from Health Forum through the Internet.

24. In 2012, Gracie Plum purchased at least one copy of the 2013 edition of the Official UB-04 Data Specifications Manual from Health Forum’s online store.

25. In 2013, Gracie Plum, purchased at least one copy of the 2014 edition of the Official UB-04 Data Specifications Manual from Health Forum’s online store.

26. In 2014, Gracie Plum, purchased at least one copy of the 2015 edition of the Official UB-04 Data Specifications Manual from Health Forum's online store.

27. Anyone purchasing copies of the 2013, 2014 and 2015 editions of the Official UB-04 Data Specifications Manuals through Health Forum's online store was required to agree to the terms of a license agreement (the "Click Through License Agreement"). A copy of the Click Through License Agreement is attached as Exhibit C hereto.

28. The Click Through License Agreement states that the licensee acknowledges and agrees that the content that is being purchased "is the proprietary and confidential information of [Health Forum] and its licensors, and that [Health Forum] and its licensors own all copyrights" in the content. The Click Through License Agreement also states that the licensee agrees that it "will not challenge [Health Forum]'s and its licensors' proprietary rights in and ownership of the content."

29. The Click Through License Agreement further provides that the licensee "may use the Content for [its] internal business purposes only" and that it "may not share, broadcast, distribute, sell, lease, loan, transfer, reverse engineer, disassemble, modify, create derivative works of or translate" the content or use the content in any "commercial activity for use by third parties."

30. The Click Through License Agreement states that it will be governed by the laws of the State of Illinois and that all disputes arising out of the Agreement must be brought in the state and federal courts in and near Chicago, Illinois and that the licensee irrevocably submits to the personal jurisdiction of such courts.

31. In each of the years 2012 through 2014, Gracie Plum agreed to the terms of the Click Through License Agreement when it purchased copies of the Official UB-04 Data Specifications Manual through Health Forum's online store.

Defendants' Business and Unlawful Conduct

32. Upon information and belief, Zebu is a computer software company that provides software products for submitting, processing and auditing claims for payment for medical services.

33. According to Zebu's website, Zebu's software is used by healthcare providers seeking to recover revenue for patient care services and supplies, by payers seeking to pay claims submitted by healthcare providers, by clearinghouses who check for errors in claims before submitting claims to payers on behalf of providers, and by auditors who review claims.

34. Zebu had access to and is using in its software content that is the same as or substantially similar to content covered by the copyright registrations referenced in paragraphs 19-22 and in Exhibits A and B, the Official UB-04 Data Specifications Manual and the code values and code titles published therein ("Infringing Content").

35. Representatives of Health Forum have informed Gracie Plum and Zebu that they are required to enter into a license agreement with AHA or its subsidiaries if they are using Infringing Content in their software products and want to continue to use such content.

36. Gracie Plum and Zebu informed Health Forum that they were not interested in entering into a license agreement with Health Forum and Zebu would not offer the revenue codes from the Official UB-04 Data Specification Manual as part of the "library" of materials it offers to customers.

37. Despite these representations, Zebu is selling software products that include Infringing Content, including the revenue codes.

38. Upon information and belief, Zebu's DataTank software contains Infringing Content.

39. Upon information and belief, Zebu's ClaimScrub software also contains Infringing Content.

40. Upon information and belief, Zebu sells customers a data file that contains Infringing Content.

41. Upon information and belief, Zebu updates its software products to reflect changes that are made to the Official UB-04 Data Specifications Manual every time AHA releases a new edition of the manual.

42. Neither AHA nor Health Forum has authorized Zebu to modify, create derivative works of, or use the content from any edition of the Official UB-04 Data Specifications Manual or data file in its commercial products.

COUNT I
COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. § 501

43. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 42 of this Complaint.

44. AHA owns all right, title and interest in and to the copyrights in each of the editions of the Official UB-04 Data Specifications Manual and all content contained therein.

45. AHA has obtained copyright registrations for the 2007 and 2010 through 2016 editions of the Official UB-04 Data Specifications Manual and for data files that include the code values and code titles for the fourteen code sets contained therein.

46. Zebu has infringed upon AHA's copyrights in each of the editions of the Official UB-04 Data Specifications Manual listed in paragraph 45 above, the data files that include the code values and code titles for the fourteen code sets, and the UB-04 codes contained therein by copying, publishing and/or incorporating Infringing Content in its software.

47. The aforesaid acts of Zebu constitute multiple counts of copyright infringement in violation of 17 U.S.C. § 501.

48. Zebu's infringement, including Zebu's use of the Infringing Content in its software products after notice that AHA owned the copyright in each edition of the Official UB-04 Data Specifications Manual and the UB-04 codes contained therein and that it needed to enter into a license agreement, was willful and intentional.

COUNT II **BREACH OF CONTRACT**

49. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 48 of this Complaint.

50. The Click Through License Agreement to which Gracie Plum agreed when it purchased copies of the 2013, 2014 and 2015 editions of the Official UB-04 Data Specifications Manual was a valid and binding contract between Gracie Plum and Health Forum.

51. Health Forum performed all of its obligations under the Click Through License Agreement.

52. Gracie Plum committed a material breach of the Click Through License Agreement by distributing, selling, modifying, creating derivative works of, and using content from the Official UB-04 Data Specifications Manual in its commercial products and/or in the products of its subsidiaries.

53. Gracie Plum's breach of the Click Through License Agreement has caused and is causing Health Forum substantial damages, in an amount to be proven at trial.

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against Defendants as follows:

- A. Permanently enjoining Defendants, their successors, subsidiaries, officers, agents and employees, and anyone acting in active concert or participation with or at the behest or direction of Defendants, from using the Infringing Content and any other content that is substantially similar to content contained in the Official UB-04 Data Specifications Manual in their software products without Plaintiffs' authorization pursuant to 17 U.S.C. § 502;
- B. Ordering that all software comprised of or containing the Infringing Content be recalled, disabled and/or destroyed and that all Internet web sites promoting Defendants' use of the Infringing Content be removed permanently;
- C. Declaring that Defendants' unauthorized use of the Infringing Content infringes the multiple copyrights owned by AHA;
- D. Declaring that Defendants' infringement was intentional and willful;
- E. Awarding AHA actual damages and all profits derived from Defendants' unauthorized use of the Infringing Content or, where applicable and at AHA's election, statutory damages pursuant to 17 U.S.C. § 504;
- F. Awarding Health Forum the damages caused by Gracie Plum's material breach of Defendant's contract with Health Forum;

- G. Assessing Plaintiffs' costs of this action and Plaintiffs' attorneys' fees against Defendants pursuant to 17 U.S.C. § 505; and
- H. Ordering or awarding any other such relief the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby make a demand for a trial by jury on all issues triable to a jury.

Respectfully submitted,

Dated: May 15, 2017

/s/ Scott D. Sherwin
Scott D. Sherwin
MORGAN, LEWIS & BOCKIUS LLP
77 West Wacker Drive
Chicago, IL 60601-5094
Telephone: 312.324.1789
Facsimile: 312.324.1001
Email: scott.sherwin@morganlewis.com

Anita B. Polott
Jordana S. Rubel
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave, NW
Washington D.C. 20004
Telephone: 202.739.5397
Facsimile: 202.739.3001
Email: anita.polott@morganlewis.com
jordana.rubel@morganlewis.com

*Attorneys for Plaintiffs American Hospital
Association and Health Forum, LLC*